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November 17, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

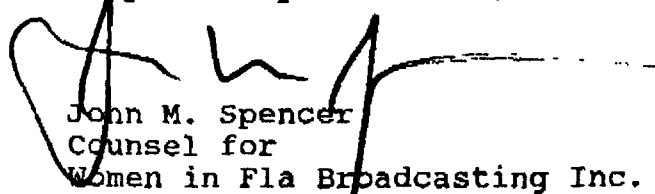
Re: MM Docket No. 92-200
FM Table of Allotments
Bronson and Cross City, Florida
Our File No. 85010

Dear Ms. Searcy:

On behalf of Women in Fla Broadcasting Inc., licensee of station WDFL-FM, Cross City, Florida, enclosed please find five copies of reply comments on the Notice of Proposed Rule Making in the above-referenced proceeding.

If any additional information is desired, please communicate with the undersigned.

Respectfully submitted,


John M. Spencer
Counsel for
Women in Fla Broadcasting Inc.

Encls. (5)

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Rule 73.202(b)) MM Docket No. 92-200
Table of Allotments,) RM-8018
FM Broadcast Stations)
(Bronson and Cross City, Florida))

TO: Chief, Allocations Branch

REPLY COMMENTS

1. By Notice of Proposed Rule Making in the above-captioned proceeding, 7 FCC Rcd 5941 (1992), the Commission gave notice of a proposal by Women in Fla Media, Inc. ("Women") to reallocate channel 295C1 from Cross City, Florida, to Bronson, Florida, and to modify the license of Women's station WDFL-FM accordingly. Women, by its attorney and pursuant to Rules 1.405(b), 1.415(c) and 1.420, hereby replies to the two comments filed in response thereto.

2. WSRZ/WRRX comments. Sarasota-FM, Inc. ("SFI") and Gator Broadcasting Corporation ("Gator") filed comments noting their pending petition for rule making and their related counterproposal in MM Docket No. 92-195 requesting various FM channel substitutions in the state of Florida. SFI and Gator suggest a potential for conflict between Women's proposal and their own, which, they claim, may require imposition of a site restriction on the proposed Bronson allotment. However, they offer no technical showing to substantiate their claim.

3. The SFI/Gator proposal consists of four possible combinations of allotments:

	<u>Present</u>	<u>Proposed Options</u>			
		<u>#1</u>	<u>#2</u>	<u>#3</u>	<u>#4</u>
Beverly Hills, Fla.	246A	292A	292C3	---	---
Chiefland, Fla.	247A	300A	300A	300A	300A
Holiday, Fla.	292A	246C2	246C2	246C2	246C2
Inverness, Fla.	---	---	---	292C3	---
Micanopy, Fla.	249A	247C2	247C2	247C2	247C2
Sarasota, Fla.	292A	293C2	293C2	293C2	293C2
Sugarmill Woods, Fla.	---	---	---	---	292C3

4. SFI/Gator's concerns are groundless. Of all the SFI/Gator proposals, only two involve channels for which Rule 73.207 prescribes minimum separations: channel 292A or 292C3 at Beverly Hills, Inverness or Sugarmill Woods, and channel 293C2 at Sarasota. The following table summarizes the pertinent relationships:

<u>Proposal</u>	<u>Required Separation</u>	<u>Actual Separation</u>	<u>Clearance</u>
Beverly Hills 292A	75 km	88 km	13 km
Beverly Hills 292C3	76 km	96 km	20 km
Inverness 292C3	76 km	110 km	34 km
Sugarmill Woods 292C3	76 km	95 km	19 km
Sarasota 293C2	79 km	220 km	141 km

(See Attachment A.) It is thus patently obvious that there is no conflict between Women's proposal and any of SFI/Gator's. Moreover, Women's proposal entails no change in the reference site

presently specified for the channel 295C1 allotment at Cross City. So barring a change in reference site, which Women does not foresee, no other site restriction is believed necessary.

5. Strickland comments. Greg Strickland filed comments claiming that Women's real intent is "to abandon a rural area to serve a city [Gainesville] 50 miles east," and that amendment of the FM Table of Allotments is not required "since the reference coordinates will provide 70 dBu signal over both Cross City and Bronson." Mr. Strickland asks the Commission to deny the proposed substitution, or alternatively to require Women to construct minimum C1 facilities at the proposed reference coordinates.

6. Mr. Strickland's comments are based on wholly unsubstantiated conjecture, and reveal a fundamental misunderstanding of the contemporary allotment process, particularly as explained in the Report and Order in MM Docket No. 88-526, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). They should therefore be denied.

7. The purpose of the allotment process is to ascertain the comparative needs of alternative communities for a local broadcast voice, in light of the Communications Act's mandate "to provide a fair, efficient, and equitable distribution of radio service [among the several states and communities]."¹

¹ 47 U.S.C. Section 307(b).

8. Both in its original Petition for Rule Making and in its more recent Comments in this proceeding, Women has demonstrated that (1) Bronson is a bona fide, growing, self-governing community with no local broadcast outlet, while (2) Cross City is a community in slow decline, with two unlimited-time radio stations. Moreover, Women showed that neither Cross City nor Bronson is part of any Census-defined Urbanized Area.

9. While Gainesville is admittedly the closest city to Bronson, it is neither so close nor so interrelated as to swallow Bronson's civic identity within its own. Indeed, Bronson and Gainesville are each the seats of their respective counties, and for that reason alone have distinctive needs and interests.

10. In short, under criteria the Commission has refined for thirty years, Bronson fully deserves the FM allotment Women has proposed. Moreover, the change in community of license from Cross City to Bronson would provide a clearly superior combination of station assignments² with respect to the objectives of Section 307(b).

11. Mr. Strickland ignores these central issues of Docket 92-200, and seeks to recast the decision as one between Cross City and Gainesville. His premise is that one possible effectuation of the

² I.e., unlimited-time WDFL(AM) at Cross City, and WDFL-FM at Bronson.

proposed Bronson allotment (which Women has not proposed) could provide 70 dBu service to Gainesville.

12. That is simply irrelevant. In BC Docket No. 82-320 the Commission abolished the Berwick doctrine and de facto reallocation policy Mr. Strickland echoes, noting that the presumption that a small-market licensee would "abandon the needs of its designated market in those situations in which its signal was able to reach a more populous community" is no longer valid.³ It concluded that the prior approach of trying to determine an FM applicant's intent was unworkable and unduly burdensome, and was often used anti-competitively by large-market broadcasters seeking to minimize competition, thus frustrating the Section 307(b) objectives.⁴

13. Since then the Commission presumes that a licensee:

intends to serve the community designated. Compliance with the rules will result in the requisite signal to the community of license, location of the main studio in that community and a programming proposal that will serve the needs of the community of license. Abolition of this policy does not mean that we will countenance subversion of our rules or the Tables. However, we believe the risk of a renewal challenge for failure actually to serve the designated community constitutes a more effective regulatory tool than utilization in advance of guidelines and factors that are inexact in divining intent.⁵

³ 93 FCC 2d 436, at 449 (1983).

⁴ Ibid., at 449-51. Interestingly, Mr. Strickland has not described his interest in this proceeding, so it is not clear whether he is acting as an agent of an undisclosed Gainesville-area station seeking to thwart additional competition, or a private citizen voicing his concerns.

⁵ Ibid., at 456.

14. Further, Mr. Strickland ignores the fact that Women's present proposal (FCC File No. BPH-8911291B) would already provide primary service not only to Cross City, Bronson and Gainesville, but to numerous other communities in the area as well.

15. Apart from the deficiencies already noted, Mr. Strickland's approach would greatly disadvantage small-market FM service, by rendering suspect any proposal that provided service to larger markets. The Commission recognized this undesirable effect in 1982, when it formally ended the policy of assigning class A channels to smaller towns and class B/C channels to larger towns. Second Report and Order in BC Docket No. 80-130, 51 RR 2d 807, 814. (1982). It should not revive that policy.

16. Finally, what of Mr. Strickland's alternative proposal to condition Women's effectuation of its proposal so as to require a specific site and specific facilities? Women urges that it be denied along with the faulty premises it rests upon.

17. The Commission has long recognized that a variety of legitimate reasons may dictate selection of an actual transmitter site different from an allotment reference site. Among them are "FAA clearance difficulties, government ownership and restrictions on use of desirable sites, as well as other environmental, economic

and coverage concerns."⁶ Similar factors affect an applicant's choice of power and antenna height.

18. (Thus, for example, Women has proposed to effectuate the allotment it received in MM Docket 87-455 at a site approximately ten miles northeast of the allotment reference site.)

19. Mr. Strickland's request to restrict Women's flexibility is entirely inappropriate, especially at the allotment stage. In effect he is seeking to impose a requirement that Women remain a de facto Cross City station despite a reallocation to Bronson. The Commission squarely considered such a proposal, and rejected it:

Several commenters suggest that we require a licensee seeking a change in its community of license to maintain some degree of service to its former community of license We decline to take into account the degree of service a licensee will maintain to its original community of license as a factor in making our decision. . . . Instead, we will rely solely on a determination as to whether the change would result in a preferential arrangement of allotments.⁷

20. In short, Mr. Strickland's comments seek to apply criteria the Commission has expressly rejected, not to mention being based entirely on speculation.⁸ Women stands willing for its proposal for a Bronson allotment to be tested under applicable

⁶ Report and Order in MM Docket No. 87-121, 4 FCC Rcd 1681 (1989).

⁷ Report and Order in MM Docket No. 88-526, 4 FCC Rcd 4870, 4873 (1989).

⁸ Mr. Strickland's comments also are not verified, and therefore may be dismissed for violation of Rule 1.52.

current allotment criteria, not those of previous decades, and for its performance as a Bronson licensee to be evaluated each time it files a license renewal application. Mr. Strickland's prophylactic approach is both wrong as a matter of law and unfair to Women, and should be denied.

21. Conclusion. The comments of neither SFI/Gator nor Greg Strickland present impediments to Women's proposal, which will bring needed service to a deserving community. Women therefore urges the Commission to amend the FM Table of Allotments as proposed, and to so modify the license of WDFL-FM.

Respectfully submitted,

WOMEN IN FLA BROADCASTING, INC.

By:


John M. Spencer
Its Counsel

Leibowitz & Spencer
One S.E. Third Avenue, Suite 1450
Miami, Florida 33131
(305) 530-1322

November 17, 1992

Attachment A
CHANNEL STUDIES

JAMES M. JOHNSON & ASSOCIATES
3750 US 27 NORTH SEBRING FL 33870

BEVERLY HILLS

REFERENCE
28 53 38 N
82 26 39 W

CLASS A
Current rules spacings
CHANNEL 292 -106.3 MHz

DISPLAY DATES
DATA 10-27-92
SEARCH 11-17-19

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
AD292	292A	Beverly Hills	FL	184.5	2.75	115.0	-112.25 *
AD292	292A	Beverly Hills	FL	184.5	2.75	115.0	-112.25 *
AD292	292C2	Holiday	FL	201.3	72.90	166.0	-93.10 *
AD292	292C3	Holiday	FL	201.3	72.90	142.0	-69.10 *
DE292	292A	Holiday	FL	201.3	72.90	115.0	-42.10 *
DE292	292A	Holiday	FL	201.3	72.90	115.0	-42.10 *
WLVUFM	292A	Holiday	FL	201.3	72.90	115.0	-42.10 *
WLVUFM	292A	Holiday	FL	201.3	72.90	115.0	-42.10 *
WDFLFM	292A	Cross City	FL	319.8	103.89	115.0	-11.11 *
WDFLFM	292A	Cross City	FL	319.8	103.89	115.0	-11.11 *
WEAGFM	292A	Starke	FL	16.0	119.54	115.0	4.54
WDFLFM	295C1	Cross City	FL	319.2	84.83	75.0	9.83
ALOPEN	295C1	Cross City	FL	309.9	87.77	75.0	12.77
AD295	295C1	Bronson	FL	309.9	87.77	75.0	12.77
DE295	295C1	Cross City	FL	309.9	87.77	75.0	12.77
WOCL	290C	Deland	FL	88.4	109.76	95.0	14.76
DE294	294C1	Leesburg	FL	114.1	91.00	75.0	16.00
WXXL	294C1	Leesburg	FL	114.1	91.00	75.0	16.00
AD294	294C1	Tavares	FL	48.3	110.74	75.0	35.74
WGGOFM	238A	Silver Springs	FL	41.9	57.82	10.0	47.82
AD293	293C2	Sarasota	FL	189.9	155.56	106.0	49.56

JAMES M. JOHNSON & ASSOCIATES
3750 US 27 NORTH SEBRING FL 33870

BEVERLY HILLS

REFERENCE

28 44 09 N

82 29 56 W

CLASS C3

Current rules spacings

CHANNEL 292 -106.3 MHz

DISPLAY DATES

DATA 10-27-92

SEARCH 11-17-19

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
AD292	292A	Beverly Hills	FL	19.1	15.64	142.0	-126.36 *
AD292	292A	Beverly Hills	FL	19.1	15.64	142.0	-126.36 *
AD292	292C2	Holiday	FL	202.7	54.66	177.0	-122.34 *
AD292	292C3	Holiday	FL	202.7	54.66	153.0	-98.34 *
DE292	292A	Holiday	FL	202.7	54.66	142.0	-87.34 *
WLVUFM	292A	Holiday	FL	202.7	54.66	142.0	-87.34 *
DE292	292A	Holiday	FL	202.7	54.66	142.0	-87.34 *
WLVUFM	292A	Holiday	FL	202.7	54.66	142.0	-87.34 *
WDFLFM	292A	Cross City	FL	327.5	114.89	142.0	-27.11 *
WDFLFM	292A	Cross City	FL	327.5	114.89	142.0	-27.11 *
WEAGFM	292A	Starke	FL	16.1	137.85	142.0	-4.15 *
DE292	292A	Sarasota	FL	181.2	155.08	142.0	13.08
WSRZFM	292A	Sarasota	FL	182.7	155.22	142.0	13.22
WSRZFM	292A	Sarasota	FL	182.7	155.22	142.0	13.22
WXXL	294C1	Leesburg	FL	102.5	90.64	76.0	14.64
DE294	294C1	Leesburg	FL	102.5	90.64	76.0	14.64
DE292	292A	Avon Park	FL	142.6	158.98	142.0	16.98
WDFLFM	295C1	Cross City	FL	328.5	95.89	76.0	19.89
AD293	293C2	Sarasota	FL	189.0	137.40	117.0	20.40
AD295	295C1	Bronson	FL	320.0	96.44	76.0	20.44
DE295	295C1	Cross City	FL	320.0	96.44	76.0	20.44
ALOPEN	295C1	Cross City	FL	320.0	96.44	76.0	20.44
WOCL	290C	Deland	FL	79.9	116.96	96.0	20.96
WVOJ	292A	Avon Park	FL	142.8	163.48	142.0	21.48
WVOJ.C	292A	Avon Park	FL	142.8	163.48	142.0	21.48
AD293	293C2	Sarasota	FL	186.7	141.95	117.0	24.95

JAMES M. JOHNSON & ASSOCIATES
3750 US 27 NORTH SEBRING FL 33870

PROPOSED INVERNESS

REFERENCE

28 40 12 N

82 22 23 W

CLASS C3

Current rules spacings

CHANNEL 292 -106.3 MHz

DISPLAY DATES

DATA 10-27-92

SEARCH 11-17-19

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
AD292	292C2	Holiday	FL	217.8	54.57	177.0	-122.43 *
AD292	292A	Beverly Hills	FL	342.0	23.21	142.0	-118.79 *
AD292	292A	Beverly Hills	FL	342.0	23.21	142.0	-118.79 *
AD292	292C3	Holiday	FL	217.8	54.57	153.0	-98.43 *
DE292	292A	Holiday	FL	217.8	54.57	142.0	-87.43 *
DE292	292A	Holiday	FL	217.8	54.57	142.0	-87.43 *
WLVUFM	292A	Holiday	FL	217.8	54.57	142.0	-87.43 *
WLVUFM	292A	Holiday	FL	217.8	54.57	142.0	-87.43 *
WDFLFM	292A	Cross City	FL	324.6	127.80	142.0	-14.20 *
WDFLFM	292A	Cross City	FL	324.6	127.80	142.0	-14.20 *
WEAGFM	292A	Starke	FL	10.6	142.13	142.0	0.13 <
DE294	294C1	Leesburg	FL	99.2	77.20	76.0	1.20 <
WXXL	294C1	Leesburg	FL	99.2	77.20	76.0	1.20 <
DE292	292A	Avon Park	FL	144.7	145.79	142.0	3.79
DE292	292A	Sarasota	FL	186.0	148.58	142.0	6.58
WSRZFM	292A	Sarasota	FL	187.6	149.06	142.0	7.06
WSRZFM	292A	Sarasota	FL	187.6	149.06	142.0	7.06
WVOJ.C	292A	Avon Park	FL	144.9	150.32	142.0	8.32
WVOJ	292A	Avon Park	FL	144.9	150.32	142.0	8.32
WOCL	290C	Deland	FL	74.9	106.59	96.0	10.59
AD293	293C2	Sarasota	FL	194.7	132.79	117.0	15.79
AD293	293C2	Sarasota	FL	192.2	136.77	117.0	19.77
WDFLFM	295C1	Cross City	FL	325.0	108.72	76.0	32.72
AD295	295C1	Bronson	FL	317.5	110.02	76.0	34.02
ALOPEN	295C1	Cross City	FL	317.5	110.02	76.0	34.02
DE295	295C1	Cross City	FL	317.5	110.02	76.0	34.02
WCIF.A	292A	Melbourne	FL	110.7	185.91	142.0	43.91
WCIF	292A	Melbourne	FL	110.7	185.91	142.0	43.91
AD294	294C1	Tavares	FL	37.6	124.30	76.0	48.30

JAMES M. JOHNSON & ASSOCIATES
3750 US 27 NORTH SEBRING FL 33870

PROPOSED SUGARMILL WOODS

REFERENCE
28 42 50 N
82 33 07 W

CLASS C3
Current rules spacings
CHANNEL 292 -106.3 MHz

DISPLAY DATES
DATA 10-27-92
SEARCH 11-17-19

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
AD292	292C2	Holiday	FL	198.3	50.56	177.0	-126.44 *
AD292	292A	Beverly Hills	FL	30.9	20.06	142.0	-121.94 *
AD292	292A	Beverly Hills	FL	30.9	20.06	142.0	-121.94 *
AD292	292C3	Holiday	FL	198.3	50.56	153.0	-102.44 *
DE292	292A	Holiday	FL	198.3	50.56	142.0	-91.44 *
WLVUFM	292A	Holiday	FL	198.3	50.56	142.0	-91.44 *
DE292	292A	Holiday	FL	198.3	50.56	142.0	-91.44 *
WLVUFM	292A	Holiday	FL	198.3	50.56	142.0	-91.44 *
WDFLFM	292A	Cross City	FL	330.3	114.31	142.0	-27.69 *
WDFLFM	292A	Cross City	FL	330.3	114.31	142.0	-27.69 *
WEAGFM	292A	Starke	FL	17.9	141.68	142.0	-0.32 *
WSRZFM	292A	Sarasota	FL	180.8	152.63	142.0	10.63
WSRZFM	292A	Sarasota	FL	180.8	152.63	142.0	10.63
DE292	292A	Sarasota	FL	179.3	152.63	142.0	10.63
AD293	293C2	Sarasota	FL	186.9	134.27	117.0	17.27
DE292	292A	Avon Park	FL	140.6	160.32	142.0	18.32
ALOPEN	295C1	Cross City	FL	323.3	95.14	76.0	19.14
AD295	295C1	Bronson	FL	323.3	95.14	76.0	19.14
DE295	295C1	Cross City	FL	323.3	95.14	76.0	19.14
WXXL	294C1	Leesburg	FL	100.4	95.25	76.0	19.25
DE294	294C1	Leesburg	FL	100.4	95.25	76.0	19.25
WDFLFM	295C1	Cross City	FL	331.9	95.43	76.0	19.43
AD293	293C2	Sarasota	FL	184.7	139.01	117.0	22.01
WVOJ.C	292A	Avon Park	FL	140.9	164.80	142.0	22.80
WVOJ	292A	Avon Park	FL	140.9	164.80	142.0	22.80
WOCL	290C	Deland	FL	79.2	122.50	96.0	26.50

JAMES M. JOHNSON & ASSOCIATES
3750 US 27 NORTH SEBRING FL 33870

PROPOSED SARASOTA REFERENCE SITE

REFERENCE
27 27 49 N
82 40 01 W

CLASS C2
Current rules spacings
CHANNEL 293 -106.5 MHz

DISPLAY DATES
DATA 10-27-92
SEARCH 11-17-92

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
AD293	293C2	Sarasota	FL	0.0	0.00	190.0	-190.00 *
AD293	293C2	Sarasota	FL	317.0	7.20	190.0	-182.80 *
AD293	293A	Sarasota	FL	146.7	16.82	166.0	-149.18 *
WSRZFM	292A	Sarasota	FL	146.7	16.82	106.0	-89.18 *
WSRZFM	292A	Sarasota	FL	146.7	16.82	106.0	-89.18 *
DE292	292A	Sarasota	FL	136.4	19.41	106.0	-86.59 *
AD292	292C2	Holiday	FL	357.0	90.68	130.0	-39.32 *
AD292	292C3	Holiday	FL	357.0	90.68	117.0	-26.32 *
DE292	292A	Holiday	FL	357.0	90.68	106.0	-15.32 *
DE292	292A	Holiday	FL	357.0	90.68	106.0	-15.32 *
WLVUFM	292A	Holiday	FL	357.0	90.68	106.0	-15.32 *
WLVUFM	292A	Holiday	FL	357.0	90.68	106.0	-15.32 *
DE294	294C1	Leesburg	FL	41.0	160.82	158.0	2.82 <
WXSL	294C1	Leesburg	FL	41.0	160.82	158.0	2.82 <
AP290	290A	Englewood	FL	142.6	62.08	55.0	7.08
AP290	290A	Englewood	FL	142.6	62.08	55.0	7.08
ALOPEN	290A	Englewood	FL	151.1	63.55	55.0	8.55
DE292	292A	Avon Park	FL	82.6	114.75	106.0	8.75
AP290	290A	Englewood	FL	148.2	65.06	55.0	10.06
WVOJ.C	292A	Avon Park	FL	84.7	116.45	106.0	10.45
WVOJ	292A	Avon Park	FL	84.7	116.45	106.0	10.45
WMTXFM	239C1	Clearwater	FL	5.4	44.86	27.0	17.86
WSUV	292A	Fort Myers Villas	FL	142.8	133.40	106.0	27.40
WZZS.C	295A	Zolfo Springs	FL	97.1	86.62	55.0	31.62

CERTIFICATE OF SERVICE

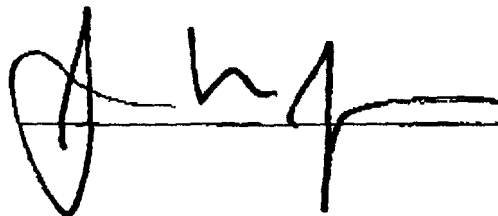
I, John M. Spencer, hereby certify that a copy of the attached Reply Comments in MM Docket No. 92-200 were this 17th day of November, 1992, sent to the following persons by First Class U.S. Mail, in fulfillment of the requirements of Rules 1.47 and 1.420:

Ms. Nancy J. Walls
Allocations Branch
Mass Media Bureau
Federal Communications Commission
Washington, D.C. 20554

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Miami, Florida 33179

A handwritten signature in black ink, appearing to be "JMS", written over a horizontal line.